

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Maximilian Boal
Name of Case Attorney

4/27/15
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2015-0015

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Valspar Corporation
901 3rd Avenue South
P.O. Box 1461
Minneapolis, Minnesota 55440

Total Dollar Amount of Receivable \$ 40,000 Due Date: 5/24/15

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

APR 24 2015

EPA ORC WS
Office of Regional Hearing Clerk

April 24, 2015

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

BY HAND

Re: *In the Matter of Valspar Corporation*
Docket No. FIFRA-01-2015-0015

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Max Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Jeffrey Hayward, Esq.

I. Statutory and Regulatory Basis

1. Under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, Complainant may assess civil penalties for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

2. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

3. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean, in pertinent part, “any insect, rodent, nematode, fungus, weed” or “any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms” declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

4. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean, in pertinent part, “any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest ...”

5. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell,” to mean, in pertinent part, “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

6. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” and “labeling.” The term “label” means “the written, printed, or graphic matter on, or attached to, the pesticide or device or

any of its containers or wrappers.” The term “labeling” means “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device...”

7. Pursuant to Section 2(c)(1)-(3) of FIFRA, 7 U.S.C. § 136(c)(1)-(3), the term “adulterated” applies to any pesticide if: (1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold; (2) any substance has been substituted wholly or in part for the pesticide; or (3) any valuable constituent of the pesticide has been wholly or in part abstracted.

8. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA and duly-designated state partners are authorized, among other things and upon presentation of credentials and written notice, to conduct inspections at producer and distributor establishments and to collect information required to be maintained by FIFRA regarding pesticide distribution or sales, including samples of pesticides that are packaged, labeled, and released for shipment.

II. General Allegations

9. Respondent is a corporation established under the laws of the State of Delaware, with a principal place of business at 1101 South Third Street, Minneapolis, Minnesota.

10. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder.

11. At time periods relevant to the violations alleged in this CAFO, Respondent (or Respondent’s predecessors in interest) manufactured wood stains and paints, among other things, at a facility located at 100 Hale Street, Newburyport, Massachusetts (“the Establishment”).

The Establishment has been registered as a pesticide-producing establishment pursuant to FIFRA Section 7, U.S.C. § 136(e), and is identified by the EPA Establishment No. 8177-MA-001.

12. At time periods relevant to the violations alleged in this CAFO, Respondent distributed or sold the following three wood preservative finish products (collectively referred to herein as “the Products”):

- a. Cabot Preservative Wood Finish-4380 Redwood, EPA Reg. No. 8177-73;
- b. Cabot Preservative Wood Finish-4337 Cordovan Brown, EPA Reg. No. 8177-73;
and,
- c. Cabot Preservative Wood Finish-4316 New Cedar, EPA Reg. No. 8177-73.

13. The distribution or sale of the Products falls within the meaning of the term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

14. At times periods relevant to the violations alleged in this CAFO, the Products were sold in individually-labeled, one-gallon containers, each of which included the following statement on their labels: “Kills mildew, mold and fungi.”

15. Based on Respondent’s claims made in or as part of its sale or distribution of the Products, the Products were intended to be sold or distributed to prevent, destroy, repel or mitigate a pest, and are therefore pesticides as defined by FIFRA. The Products are not otherwise exempt from regulation under FIFRA.

16. Accordingly, the requirements of Section 12(a)(1)(E) of FIFRA apply to Respondent’s Products.

17. Pursuant to FIFRA Sections 8 and 9, 7 U.S.C. §§ 136(f) and 136(g), on October 22, 2013 and December 27, 2013, the Massachusetts Department of Agricultural Resources (“MDAR”),

which is authorized to conduct inspections under FIFRA, conducted inspections (“the Inspections”) at the Establishment.

18. During the Inspections, a duly-authorized inspector collected physical samples of the Products, which, at that time, were packaged, labeled, and released for shipment.

III. Violations

19. Complainant re-alleges paragraphs 1 through 18.

20. The labels of all three Products state that the Products contain 0.57% of the active ingredient 3-Iodo-2-Propynal-Butyl Carbamate.

21. The laboratory analysis of the samples of Cabot Preservative Wood Finish-4380 Redwood (Batch number 3237024985), collected during the Inspections, showed the concentration of 3-Iodo-2-Propynal-Butyl Carbamate was 0.013% and 0.007%. The bin label lists the concentration of 3-Iodo-2-Propynal-Butyl Carbamate for this Product as 0.57%.

22. The laboratory analysis of the samples of Cabot Preservative Wood Finish-4337 Cordovan Brown (Batch number 3837026383), collected during the Inspections, showed the concentration of 3-Iodo-2-Propynal-Butyl Carbamate was 0.14% and 0.046%. The bin label lists the concentration of 3-Iodo-2-Propynal-Butyl Carbamate for this Product as 0.57%.

23. The laboratory analysis of the samples of Cabot Preservative Wood Finish-4316 New Cedar (Batch number 3237025009), collected during the Inspections, showed the concentration of 3-Iodo-2-Propynal-Butyl Carbamate was 0.028% and 0.006%. The bin label lists the concentration of 3-Iodo-2-Propynal-Butyl Carbamate for this Product as 0.57%.

24. Based on the results of the laboratory analysis of the samples of the Products, as described in in Paragraphs 21, 22, and 23 above, each of the Products was adulterated as defined by FIFRA and its implementing regulations.

25. Based on the Inspections and EPA's subsequent investigations, Respondent distributed or sold the adulterated Products in at least 14 transactions.

26. Accordingly, on at least 14 occasions, Respondent violated Section 12(a)(1)(E) of FIFRA.

IV. Terms of Settlement

27. Respondent certifies that it has complied with the Stop Sale, Use, or Removal Order (EPA Docket No. SSURO-2014-002) ("SSURO") issued by EPA to Respondent on June 12, 2014 regarding the Products.

28. By signing this CAFO, Respondent certifies that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder and that it has fully addressed the violations alleged herein by EPA.

29. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

30. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

31. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

32. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

Penalty

33. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) and the 2013 update to the Penalty Inflation Rule at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and to \$7,500 for violations occurring after January 12, 2009.

34. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA and Penalty Inflation Rule, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of forty thousand dollars (\$40,000) in settlement of the violations alleged herein.

35. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents to the issuance of this CAFO and consents to the payment of a civil penalty of forty thousand dollars (\$40,000).

36. Respondent shall pay the penalty of \$40,000 within thirty (30) days of the effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$40,000 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 A.M. Eastern Standard time to be considered as received that day.
- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of Valspar Corporation, Consent Agreement and Final Order, EPA Region 1,*" Respondent's name and address, and the EPA Docket Number of this action (FIFRA-01-2015-0015), shall be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

and

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-2
Boston, MA 02109-3912
boal.maximilian@epa.gov

37. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued

interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

38. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

General Provisions

39. Respondent shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Each Party shall bear its own costs, disbursements and attorneys' fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. Section 504, or other applicable law.

40. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violations alleged in this CAFO, contingent

on Respondent's full compliance with the terms of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

41. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable provision of law.

42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

43. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

For Respondent Valspar Corporation:

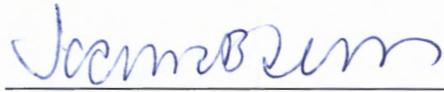


Name: Rolf Engh
Title: Executive Vice President, General Counsel and Secretary
Valspar Corporation

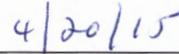
4/2/15

Date

For Complainant, United States Environmental Protection Agency:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I



Date



Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency
Region I



Date

V. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent, Valspar Corporation, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date:

4/24/15



LeAnn Jensen Timothy Williamson
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
Valspar Corporation)	Docket No. FIFRA-01-2015-0015
)	CERTIFICATE OF SERVICE
)	
)	
Respondent.)	
)	

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, Massachusetts 02109-3912
Copy (Certified Mail, Return Receipt Requested):	Valspar Corporation 901 3rd Avenue South P.O. Box 1461 Minneapolis, Minnesota 55440

Dated: <u>4-24-2015</u>	 _____ Maximilian Boal Enforcement Counsel U.S. EPA, Region I 5 Post Office Square, Suite 100 (OES04-2) Boston, Massachusetts 02109-3912
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